

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:21-cv-00333-MOC-WCM

JON D. BABB,	)	
GEORGE G. KITCHENS,	)	
CARL BAILEY,	)	
PAUL NEELY,	)	
MICHAEL F CORCORAN,	)	
THOMAS T. MCCOY TRUST,	)	
PHIL O. NELSON,	)	ORDER
PATRICK G. RENN,	)	
EUGENE A. RICE, JR.,	)	
GEORGE E. SUMMERS,	)	
WAYNE C. BECKNER,	)	
SAMUEL C. BOWYER	)	
<i>as Personal Representative of</i>	)	
<i>the Estate of</i>	)	
<i>James W. Bowyer, and</i>	)	
MARK E. GRANTHAM,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
WADE HAMPTON GOLF CLUB, INC.,	)	
	)	
Defendant.	)	
	)	

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This matter is before the Court following a video teleconference with counsel, which was conducted on June 21, 2023, concerning discovery issues raised by Plaintiffs and that are described in a “Joint Memorandum Re Status of Discovery Dispute” (the “Memorandum,” Doc. 40). This Order addresses certain topics discussed during the conference.

## **I. Motions Practice**

The issues Plaintiffs raise pertain primarily to Rule 30(b)(6) testimony given by Defendant's designees.

As noted during the conference, at least some of the issues—for example whether certain documents associated with the testimony have been produced—are capable of being resolved without court intervention.

To the extent Plaintiffs wish to pursue relief regarding other issues raised in the Memorandum, they may file an appropriate motion to that effect, subject to a briefing schedule and parameters that the Court established and which is described below.

## **II. Mediation**

The Pretrial Order and Case Management Plan was entered on September 14, 2022 and, among other things, directed the parties to engage in a mediated settlement conference by June 20, 2023. However, from the information provided during the conference, it appears that the parties have not fully agreed on a mediator or finalized a date for mediation, much less completed a settlement conference.

While the undersigned recognizes defense counsel's statement, as referenced during the conference, that the chances of settlement at mediation are low, the parties are nonetheless expected to follow the Pretrial Order. In that regard, no motion seeking an order extending the mediation deadline has

been filed and no legitimate reason has been provided for the parties' failure to follow the Court's clear direction. See Doc. 21 at 4 ("The timing for completing ADR is in the parties' discretion, except that it shall be completed no later than June 20, 2023.").

In light of these circumstances, the undersigned has closely considered whether to hold in abeyance Plaintiffs' pending Motion to Amend (Doc. 33) and Plaintiffs' pending Motion to Compel (Doc. 34). However, so that this matter may proceed without delay, the undersigned will decline to do so at this time.

The Court will, though, direct the parties to file a notice advising of their choice of mediator and the specific date they and the mediator have selected for the settlement conference. The parties are also reminded "that the Court will not consider summary judgment motions" until after a certificate is filed certifying that mediation has been completed. Doc. 21 at 4.

**IT IS THEREFORE ORDERED THAT:**

1. To the extent they deem it necessary following additional discussions between counsel, Plaintiffs are **GRANTED LEAVE** to file an appropriate motion relative to any remaining disputed issues raised in the Memorandum. The following limitations will apply to any such motion:

- a. Plaintiffs' Motion shall be limited to no more than five pages (exclusive of exhibits) and shall be filed on or before June 23, 2023.
  - b. Defendant's response shall be limited to no more than five pages (exclusive of exhibits) and shall be filed on or before June 28, 2023.
  - c. Plaintiffs' reply, if any, shall be limited to no more than three pages (exclusive of exhibits) and shall be filed on or before July 3, 2023.
2. The parties **SHALL FILE**, on or before June 28, 2023, a Notice identifying the mediator they have selected and the date they have chosen for mediation.

Signed: June 21, 2023



W. Carleton Metcalf

W. Carleton Metcalf  
United States Magistrate Judge

